IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.669 OF 2004.

Indubai Krishna Vasudev & anr. ... Petitioners
Versus.
Krishna Ramchandra Vasudev & anr. ... Respondents.

Shri V.V.Punwant i/by Shri Amit Shete and Shri A.B.Borkar for the Petitioners.

Shri Rohit V.Pawaskar for the Respondent No.1.

Shri K.V.Saste, A.P.P. for State.

CORAM : ABHAY S. OKA, J.

DATED : 24th June, 2005.

P.C.:

1. Submissions were fully heard on the last date and the order was not passed only with a view to give one more opportunity to the parties to make one more effort for settlement. The learned Advocates appearing for the parties state that the settlement is not possible.

2. This petition is filed by the wife and daughter of the Respondent No.1. The petition arises out of a proceeding under section 125 of the Code of Criminal Procedure, 1973. The Application made by the Petitioners under section 125 of the said Code was allowed by order dated 16th March 2000 and the Respondent No.1 was directed to pay monthly maintenance of Rs.400/- to the Petitioner No.1 and Rs.300/- to the Petitioner No.2 from the date of the order. On 9th

August 2000 a Revision Application was preferred by the Petitioners for challenging the order passed by the learned Judicial Magistrate First Class. As there was delay in preferring the Revision Application, an Application for condonation of delay was filed. The said Application for condonation of delay came to be dismissed for default on 21st March 2002. Subsequently on 27th September 2002 one more application was filed by the Petitioners for condonation of delay in the Sessions Court which also came to be dismissed by order dated 3rd October 2003. The said Application was dismissed on the ground that it was not maintainable as earlier Application for condonation of delay was dismissed by order dated 21st March 2002. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 21st March 2002 by which the first Application made by the Petitioners for condonation of delay was dismissed for default.

3. The leaned Counsel appearing for the Petitioners submitted that the delay in filing the Revision Application was only of 45 days and considering the nature of dispute the learned Addl. Sessions Judge ought to have adopted a liberal approach. It is submitted that the Petitioner No.1 is an illiterate lady and Petitioner No.2 is the minor daughter and they were not aware about the Court procedure and therefore, were absent on the date on which the Application for

condonation of delay was kept for hearing. He submitted that the Advocate appointed by the Petitioners was also absent and therefore, the Petitioners cannot be blamed for the dismissal of the Application for default.

4. The learned Counsel appearing for the Respondent No.1 submitted that while filing this Petition the fact that the subsequent application for condonation of delay was filed and the same was rejected was suppressed from this Court and only after this fact was brought to the notice of this Court by the Respondent No.1, the petition was amended and copies of the said application and order passed thereon were placed on record. He submitted that on a subsequent application made by the Petitioner under section 127 of the said Code, quantum of maintenance has been enhanced and therefore, the Revision which is sought to be filed by the Petitioners in the Sessions Court does not survive.

5. I have considered the rival submissions. A perusal of the order dated 21st March 2002 shows that the Application for condonation of delay was dismissed as the Petitioners and their Advocate were absent. Once the Petitioners had engaged services of an Advocate, they were under no obligation to remain present on the date fixed for hearing of the Application for condonation of delay. There is nothing on record to show that the learned Addl.Sessions Judge had directed

the parties to lead oral evidence in support of the Application for condonation of delay. Hence it is obvious that the Application came to be dismissed for default only because the Advocate appointed by the Petitioners was not present.

6. The subsequent application made by the Petitioners for condonation of delay was not maintainable and therefore, the same has been dismissed. The Petitioners ought to have annexed a copy of the said application and the order passed thereon to this Application. However, it is to be noted that the fact of filing of the said Application and rejection thereof is specifically set out in paragraph 7 of the petition. The fact that the subsequent application was filed which was dismissed as not maintainable will not affect the merits of the first Application for condonation of delay. As there is no suppression of fact that the second application was filed and was rejected, the objection raised by the learned Counsel for the Respondent No.1 regarding non filing of copies thereof has no merit.

7. By an order passed under section 127 of the said Code, the monthly maintenance amount has been enhanced. The effect of the said order will have to be considered when the Revision Application is heard on merits. Nothing is placed on record to show that the amount of maintenance has been enhanced from the date of filing of

the earlier application for maintenance which is the subject matter of this petition.

8. It is obvious that the order dismissing the Application for condonation of delay in default will have to be set aside. In normal course the Application for condonation of delay is required to be remanded to the Sessions Court. However, it is to be borne in mind that the present petition arises out of the proceedings for grant of maintenance in favour of the wife and minor child. Therefore, the order of remand will cause no prejudice to both the parties. Delay in filing the Revision Application was only of 45 days. The ground given in the Application is that the Applicant No.1 was not keeping good health. As delay was only of 45 days justice oriented approach ought to be adopted and a liberal view of the matter ought to be taken by condoning the delay.

9. Hence I pass the following order:

(i) The impugned order dated 21st March 2002 passed by the Sessions Court in Criminal Miscellanous Application No.50 of 2000 is quashed and set aside and the said Application stands allowed.

(ii) The Sessions Court will now register the Revision Application preferred by the Applicants. The said Revision Application shall be decided in accordance with law by the learned Sessions Judge.

(iii) As and when such Revision Application is heard on merits, it will be open for the Respondent No.1 to place on record the order passed subsequently on Application under section 127 of the said Code made by the Applicants and effect of the said order will be considered by the Court taking up the Revision Application.

(iv) Rule is partly made absolute in the above terms.

(v) Parties and the concerned Court to act on an authenticated copy of this order.

Judge.